

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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IVAN GINDEA,

Docket No. 18-CV-6493(WFK)(CLP)

Plaintiffs,

-against-

ANSWER TO AMENDED COMPLAINT

MAIDENBERG STEEL CORP., LONG HORN
CORP., MOSHE MAIDENBERG, AND
MATAN MAIDENBERG,

Defendants.
-----X

Defendants, LONG HORN CORP. (“Long Horn”) AND MATAN MAIDENBERG
 (“Matan”), jointly referred to herein as “Long Horn Defendants”, by and through their attorneys,
MALVINA LIN, P.C., as and for their Answer to the Amended Complaint of Ivan Gindea dated
May 28, 2019 alleges upon information and belief as follows:

NATURE OF THIS ACTION

1. Paragraph 1 contains a statement to which no response is required, however to the extent a response is necessary, Long Horn Defendants deny the allegations set forth in paragraph 1 to the Amended Complaint except to respectfully refer all questions of law to the Court.
2. Long Horn Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 2 of the Amended Complaint except deny each and every allegation set forth in paragraph 2 of the Amended Complaint to the extent it applies to the Long Horn Defendants.
3. Long Horn Defendants deny each and every allegation set forth in paragraph 3 of the Amended Complaint.

4. Long Horn Defendants deny each and every allegation set forth in paragraph 4 of the Amended Complaint.
5. Long Horn Defendants deny each and every allegation set forth in paragraph 5 of the Amended Complaint.

JURISDICTION AND VENUE

6. Paragraph 6 contains a statement to which no response is required, however to the extent a response is necessary, Long Horn Defendants deny the allegations set forth in paragraph 6 to the Amended Complaint except to respectfully refer all questions of law to the Court.
7. Paragraph 7 contains a statement to which no response is required, however to the extent a response is necessary, Long Horn Defendants deny the allegations set forth in paragraph 7 to the Amended Complaint except to respectfully refer all questions of law to the Court.
8. Paragraph 8 contains a statement to which no response is required, however to the extent a response is necessary, Long Horn Defendants deny the allegations set forth in paragraph 8 to the Amended Complaint except to respectfully refer all questions of law to the Court.

THE PARTIES

9. Long Horn Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 9 of the Amended Complaint.
10. Long Horn Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 10 of the Amended Complaint.
11. Long Horn Defendants admit the allegations set forth in paragraph 11 of the Amended Complaint.
12. Long Horn Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 12 of the Amended Complaint.

13. Long Horn Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 13 of the Amended Complaint.
14. Long Horn Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 14 of the Amended Complaint.
15. Long Horn Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 15 of the Amended Complaint.
16. Long Horn Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 16 of the Amended Complaint.
17. Long Horn Defendants deny each and every allegation set forth in paragraph 17 of the Amended Complaint.
18. Long Horn Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 18 of the Amended Complaint.
19. Long Horn Defendants deny each and every allegation set forth in paragraph 19 of the Amended Complaint.
20. Long Horn Defendants deny each and every allegation set forth in paragraph 20 of the Amended Complaint.
21. Long Horn Defendants deny each and every allegation set forth in paragraph 21 of the Amended Complaint.
22. Long Horn Defendants deny each and every allegation set forth in paragraph 22 of the Amended Complaint.
23. Long Horn Defendants deny each and every allegation set forth in paragraph 23 of the Amended Complaint.

24. Long Horn Defendants deny each and every allegation set forth in paragraph 24 of the Amended Complaint.
25. Long Horn Defendants deny each and every allegation set forth in paragraph 25 of the Amended Complaint.
26. Long Horn Defendants deny each and every allegation set forth in paragraph 26 of the Amended Complaint.
27. Long Horn Defendants deny each and every allegation set forth in paragraph 27 of the Amended Complaint.
28. Long Horn Defendants deny each and every allegation set forth in paragraph 28 of the Amended Complaint.
29. Long Horn Defendants deny each and every allegation set forth in paragraph 29 of the Amended Complaint.
30. Long Horn Defendants deny each and every allegation set forth in paragraph 30 of the Amended Complaint.
31. Long Horn Defendants deny each and every allegation set forth in paragraph 31 of the Amended Complaint.
32. Long Horn Defendants deny each and every allegation set forth in paragraph 32 of the Amended Complaint.
33. Long Horn Defendants deny each and every allegation set forth in paragraph 33 of the Amended Complaint.
34. Long Horn Defendants deny each and every allegation set forth in paragraph 34 of the Amended Complaint.

35. Long Horn Defendants deny each and every allegation set forth in paragraph 35 of the Amended Complaint.

36. Long Horn Defendants deny each and every allegation set forth in paragraph 36 of the Amended Complaint.

FACTS

37. Long Horn Defendants repeat and reallege each and every response as set forth in their responses to paragraphs 1 through 36 of the Amended Complaint.

38. Long Horn Defendants deny each and every allegation set forth in paragraph 38 of the Amended Complaint.

39. Long Horn Defendants deny each and every allegation set forth in paragraph 39 of the Amended Complaint.

40. Long Horn Defendants deny each and every allegation set forth in paragraph 40 of the Amended Complaint.

41. Long Horn Defendants deny each and every allegation set forth in paragraph 41 of the Amended Complaint.

42. Long Horn Defendants deny each and every allegation set forth in paragraph 42 of the Amended Complaint.

43. Long Horn Defendants deny each and every allegation set forth in paragraph 43 of the Amended Complaint.

44. Long Horn Defendants deny each and every allegation set forth in paragraph 44 of the Amended Complaint.

45. Long Horn Defendants deny each and every allegation set forth in paragraph 45 of the Amended Complaint.

46. Long Horn Defendants deny each and every allegation set forth in paragraph 46 of the Amended Complaint.
47. Long Horn Defendants deny each and every allegation set forth in paragraph 47 of the Amended Complaint.
48. Long Horn Defendants deny each and every allegation set forth in paragraph 48 of the Amended Complaint.
49. Long Horn Defendants deny each and every allegation set forth in paragraph 49 of the Amended Complaint.
50. Long Horn Defendants deny each and every allegation set forth in paragraph 50 of the Amended Complaint.
51. Long Horn Defendants deny each and every allegation set forth in paragraph 51 of the Amended Complaint.
52. Long Horn Defendants deny each and every allegation set forth in paragraph 52 of the Amended Complaint.
53. Long Horn Defendants deny each and every allegation set forth in paragraph 53 of the Amended Complaint.
54. Long Horn Defendants deny each and every allegation set forth in paragraph 54 of the Amended Complaint.
55. Long Horn Defendants deny each and every allegation set forth in paragraph 55 of the Amended Complaint.
56. Long Horn Defendants deny each and every allegation set forth in paragraph 56 of the Amended Complaint.

57. Long Horn Defendants deny each and every allegation set forth in paragraph 57 of the Amended Complaint.

58. Long Horn Defendants deny each and every allegation set forth in paragraph 58 of the Amended Complaint.

59. Long Horn Defendants deny each and every allegation set forth in paragraph 59 of the Amended Complaint.

60. Long Horn Defendants deny each and every allegation set forth in paragraph 60 of the Amended Complaint.

FIRST CLAIM FOR RELIEF
(FLSA Overtime Violations, 29 U.S.C. §§ 201 et seq.)

61. Long Horn Defendants repeat and reallege each and every response as set forth in their responses to paragraphs 1 through 60 of the Amended Complaint.

62. Long Horn Defendants deny each and every allegation set forth in paragraph 62 of the Amended Complaint.

63. Long Horn Defendants deny each and every allegation set forth in paragraph 63 of the Amended Complaint.

64. Long Horn Defendants deny each and every allegation set forth in paragraph 64 of the Amended Complaint.

65. Long Horn Defendants deny each and every allegation set forth in paragraph 65 of the Amended Complaint.

SECOND CLAIM FOR RELIEF
(New York Minimum Wage Act, N.Y. Stat. § 650 et seq.))

66. Long Horn Defendants repeat and reallege each and every response as set forth in their responses to paragraphs 1 through 65 of the Amended Complaint.

67. Long Horn Defendants deny each and every allegation set forth in paragraph 67 of the Amended Complaint.

68. Long Horn Defendants deny each and every allegation set forth in paragraph 68 of the Amended Complaint.

69. Long Horn Defendants deny each and every allegation set forth in paragraph 69 of the Amended Complaint.

70. Long Horn Defendants deny each and every allegation set forth in paragraph 70 of the Amended Complaint.

THIRD CLAIM FOR RELIEF

(New York Spread of Hours Provisions, N.Y. Lab. L. § 650 et seq., and N.Y. Comp. Code R. & Regs. tit. 12, § 137-1.7)

71. Long Horn Defendants repeat and reallege each and every response as set forth in their responses to paragraphs 1 through 70 of the Amended Complaint.

72. Long Horn Defendants deny each and every allegation set forth in paragraph 72 of the Amended Complaint.

73. Long Horn Defendants deny each and every allegation set forth in paragraph 73 of the Amended Complaint.

74. Long Horn Defendants deny each and every allegation set forth in paragraph 74 of the Amended Complaint.

FOURTH CLAIM FOR RELIEF

(New York Labor Law-Wage Notice Violation)

75. Long Horn Defendants repeat and reallege each and every response as set forth in their responses to paragraphs 1 through 74 of the Amended Complaint.

76. Long Horn Defendants deny each and every allegation set forth in paragraph 76 of the Amended Complaint.

77. Long Horn Defendants deny each and every allegation set forth in paragraph 77 of the Amended Complaint.

78. Long Horn Defendants deny each and every allegation set forth in paragraph 78 of the Amended Complaint.

FIFTH CLAIM FOR RELIEF
(New York Labor Law-Wage Notice Violations)

79. Long Horn Defendants repeat and reallege each and every response as set forth in their responses to paragraphs 1 through 78 of the Amended Complaint.

80. Long Horn Defendants deny each and every allegation set forth in paragraph 80 of the Amended Complaint.

81. Long Horn Defendants deny each and every allegation set forth in paragraph 81 of the Amended Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

82. Plaintiff has failed to allege a cause of action upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

83. Certain allegations, to wit those more than two years prior to the filing of the Amended Complaint, are time barred.

84. All claims for relief beyond the applicable statutes of limitation are barred.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

85. Plaintiff's claims are barred in whole or in part by the doctrine of waiver.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

86. Plaintiff's claims are barred in whole or in part by the doctrine of laches.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

87. Plaintiff's claims are barred in whole or in part because Plaintiff has been fully compensated for any and all work that may have been performed.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

88. Plaintiff's FLSA claims against Matan are barred as he is not the Plaintiff's employer as defined in the FLSA.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

89. Plaintiff cannot recover liquidated damages under FLSA because, in accordance with 20 U.S. § 260, the Long Horn Defendants at all times acted in good faith and believed that all conduct was not in violation of the FLSA.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

90. To the extent that Plaintiff is able to establish that any of the Long Horn Defendants is liable under the FLSA, Plaintiff's recovery must be limited because Long Horn Defendants did not act willfully.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

91. The Amended Complaint is barred by the doctrine of payment.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

92. The Plaintiff's claims are barred in whole or in part because the damages alleged by Plaintiff, if any, were in fact sustained and were caused by the acts or omissions of others, including the Plaintiff, for which the Long Horn Defendants have no legal responsibility or culpability.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

93. Plaintiff's claims are barred in whole or in part because of Plaintiff's own wrongful and dilatory conduct.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

94. Plaintiff claims are barred in whole or in part due to Plaintiff's own fraudulent conduct.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

95. Defendant Long Horn Defendants reserves the right to amend its answer and/or assert additional affirmative defenses as additional discovery and investigation may reveal.

PRAYER FOR RELIEF

WHEREFORE, Defendants Long Horn Corp. and Matan Maidenberg demand judgment dismissing the Amended Complaint, with prejudice, and awarding Defendants Long Horn Corp. and Matan Maidenberg attorney's fees, costs and disbursements of this action, and such other and further relief as to this Court seems just and proper.

Dated: August 15, 2019
Brooklyn, New York

Respectfully submitted,

MALVINA LIN, P.C.



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Maidenberg*